



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 180117042-8884-02]

RTID 0648-XB145

#### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason General category retention limit adjustment.

**SUMMARY:** NMFS is adjusting the Atlantic bluefin tuna (BFT) General category daily retention limit from three large medium or giant BFT to one large medium or giant BFT for the remainder of the June through August 2021 subquota period. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

**DATES:** Effective July 11, 2021 through August 31, 2021.

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**SUPPLEMENTARY INFORMATION:** Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic

HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

In 2018, NMFS implemented a final rule that established the U.S. BFT quota and subquotas consistent with ICCAT Recommendation 17-06 (83 FR 51391, October 11, 2018). In 2020, following a stock assessment update, ICCAT adopted Recommendation 20-06, which maintained the total allowable catch of 2,350 metric tons (mt) and the associated U.S. quota. As such, as described in § 635.27(a), the current baseline U.S. quota continues to be 1,247.86 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The baseline quota for the General category is 555.7 mt. Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a portion of the annual General category quota. This action would adjust the daily retention limit for the remainder of the second time period in 2021, June through August.

#### **Adjustment of General Category Daily Retention Limit**

The default General category retention limit is one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (§ 635.23(a)(2)).

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based

on consideration of the relevant criteria provided under § 635.27(a)(8). NMFS adjusted the daily retention limit for the beginning of the June through August 2021 subquota period from the default level of one large medium or giant BFT to three large medium or giant BFT (86 FR 25992, May 12, 2021). NMFS has considered the relevant determination criteria and their applicability to the General category BFT retention limit for the remainder of the June through August 2021 subquota time period. The criteria include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Prolonged opportunities to land BFT over the longest time-period allowable would support the collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). Commercial-size BFT are currently readily available to vessels fishing under the General category quota. As of July 8, 2021, the General category has landed approximately 34.9 mt, representing 13 percent of the General category subquota for the June 1 through August 31 period. If current catch rates continue with the three-fish daily limit, the available subquota for June 1 through August 31 period will be reached or exceeded, and NMFS would need to close the fishery earlier than otherwise would be necessary under a lower limit. NMFS intends to provide General category participants in all areas and time periods opportunities to harvest the General category quota without exceeding it, through active inseason management such as retention limit

adjustments and/or the timing and amount of quota transfers (based on consideration of the determination criteria regarding inseason adjustments), while extending the season as long as practicable. NMFS is setting the limit for the remainder of the June through August 2021 subquota period in such a way that NMFS believes, informed by past experience, increases the likelihood that the fishery will remain open throughout the subperiod and year. NMFS also took into consideration a recently published proposed rule that would set restricted-fishing days for the General category during the months of July through November 2021 (86 FR 25992, May 12, 2021). If finalized, that proposed rule would further increase the likelihood that the fishery would remain open throughout the subperiod and year.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP (§ 635.27(a)(8)(v) and (vi)). This retention limit would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT recommendations, (established in Recommendation 17-06 and maintained in Recommendation 20-06), ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This retention limit is in line with the established management measures and stock status determinations. It is also important that NMFS limit landings to the subquotas both to adhere to the subquota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (*e.g.*, fish caught at each age) that was assumed in the latest stock assessment, and this retention limit is consistent with those objectives.

Another principal consideration in setting the retention limit is the objective of providing opportunities to harvest the available General category quota without

exceeding the annual quota, based on the objectives of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest available BFT quota allocations (related to § 635.27(a)(8)(x)).

Given these considerations, NMFS has determined that a one-fish General category retention limit is warranted for the remainder of the June-August 2021 subquota period. This retention limit would provide a reasonable opportunity to harvest the available U.S. BFT quota (including the expected increase in available 2021 quota based on 2020 underharvest), without exceeding it, while maintaining an equitable distribution of fishing opportunities; help optimize the ability of the General category to harvest its available quota; allow collection of a broad range of data for stock monitoring purposes; and be consistent with the objectives of the 2006 Consolidated HMS FMP and amendments. Therefore, NMFS decreases the General category retention limit from three to one large medium or giant BFT per vessel per day/trip, effective *[insert date 3 calendar days after date of filing for public inspection with the Office of the Federal Register]*, through August 31, 2021.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example (and specific to the June through August 2021 limit), whether a vessel fishing under the General category retention limit takes a two-day trip or makes two trips in one day, the daily limit of one fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeting fishing for BFT, and applies to vessels permitted in the General category, as well as to HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. For information regarding the HMS Charter/Headboat commercial sale endorsement, see 82 FR 57543, December 6, 2017.

## **Monitoring and Reporting**

NMFS will actively monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat vessel owners are required to report their own catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov* or by using the HMS Catch Reporting app, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access *hmspermits.noaa.gov*, for updates on quota monitoring and inseason adjustments.

## **Classification**

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 635, which was issued pursuant to section 304(c), and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

NMFS provides notification of retention limit adjustments by publishing the notice in the **Federal Register**, e-mailing individuals who have subscribed to the Atlantic

HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *hmspermits.noaa.gov*. The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery.

Prior notice and an opportunity for public comment is impracticable because the regulations implementing the 2006 Consolidated HMS FMP, as amended, intended that inseason retention limit adjustments would allow the agency to respond quickly to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Based on available BFT quotas, fishery performance in recent years, and the availability of BFT on the fishing grounds, adjustment to the General category BFT daily retention limit from the current level is warranted.

Delays in adjusting the retention limit may result in the available June 1 through August 31 subquota being reached or exceeded and NMFS needing to close the fishery earlier than otherwise would be necessary under the lower limit being set for the remainder of this period. Such delays could adversely affect those General category and HMS Charter/Headboat vessels that would otherwise have an opportunity to harvest BFT if the fishery were to remain open for as feasible throughout the remaining subquota periods. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the 2006 Consolidated HMS FMP and amendments. Adjustment of the retention limit needs to be effective as soon as possible to extend fishing opportunities for fishermen in all geographic areas, and to provide equitable opportunities.

Prior notice and an opportunity for public comment is also impracticable for the retention limit adjustment to one fish for the remainder of the June through August 2021 subquota period. Avoiding delay in implementation will also allow fishermen to take advantage of the availability of fish on the fishing grounds and of quota. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 8, 2021.

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[FR Doc. 2021-14849 Filed: 7/8/2021 4:15 pm; Publication Date: 7/13/2021]